IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 11.09.2006

C O R A M

THE HONOURABLE MRS. JUSTICE PRABHA SRIDEVAN

Writ Petition No.24596 of 2006

Miss A. Karthiga, Minor, rep. by
Mother & Guardian Mrs. Pushpalatha,
No.25, Postal Colony First Street,
West Mambarlam, Chennai-33. .. Petitioner

Versus

1. The Secretary,
   Tamil Nadu Private Medical College Association,
   P.S.G. Institutions Campus,
   Post Box No.1609, Avinashi Road,
   Peelamedu, Coimbatore-641 004.

2. The Registrar,
   P.S.G. Institute of Medical Sciences and
   Research, Post Box No.1674,
   Peelamedu, Coimbatore-641 004.

3. The Registrar,
   Chettinad Hospital and Research Institute,
   Padur, Kancheepuram District.

4. The Secretary,
   Permanent Committee for C.E.T. for
   Private Professional Colleges in Tamil Nadu,
   No.7-A (N.C.B.), P.S.K.R. Salai,
   Greenways Road,
   Chennai-28. .. Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India for a writ of declaration, declaring that the Common Entrance Test conducted by the 1st respondent on 15.7.2006 for selection and admission of students in the first year M.B.B.S. Course in the 2nd and 3rd respondent Medical Colleges for 2006-2007 is illegal and unconstitutional and consequently direct the respondents to afresh hold the Common Entrance Examination by adopting the minimum eligibility norms and the rules of communal reservation as applicable in the State of Tamil Nadu and Annamalai University.

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For Petitioner : Mr. K.M. Vijayan, Senior Counsel for
Mr. M. Chidambaram
For Respondents : Mr. R. Muthukumaraswamy, Senior Counsel
for Mr. R. Karthikeyan (R-1)
Mr. R. Krishnamoorthy, Senior Counsel
for Mr. D. Balaraman (R-2)
Mr. Sathish Parasaran (R-3)
Mr. M. Sekar, Spl. Govt. Pleader (R-4)

O R D E R

The question raised in this writ petition, we are informed, has not been raised till now and that is, whether the autonomy of the private unaided professional institutions includes the right to fix a higher minimum marks to be obtained in the qualifying examination in order to be eligible to write the Common Entrance Test.

2. Imparting instruction and giving education was philanthropy - a pious duty - in the past, and later a service. In recent times, it has developed into a business and now it stands recognized as an industry. A sizeable amount of litigation centres around medical education. The national wealth of available seats is scarce while the aspirants, desirous of sharing such wealth, are numerous. Every attempt at laying down criteria for choosing the more deserving out of the several aspirants is subjected to challenge before the constitutional courts of the country - vide State of Madhya Pradesh vs. Thirthani [(2003) 7 S.C.C. 83]. Now, it is the turn of the two Unaided Private Medical Colleges, whose Common Entrance Tests are attacked as being illegal and unconstitutional as they are not in consonance with the provisions laid down in G.O. Ms. No.100, Health and Family Welfare Department, dated 14.5.2003.

3. The relevant extracts from G.O. Ms. No.100 read as follows :

"The Government have examined the issue of fixing minimum eligibility for admission to Medical/Dental/Para Medical Courses in Government/Unaided Non-Minority and Unaided Minority Institutions in the light of the law as declared by the Supreme Court of India as mentioned in para 1 and 2 above and direct that the existing minimum eligibility marks prescribed for Medical/Dental/Para Medical Courses in Government/Unaided Non-Minority and Unaided Minority Institutions as detailed below shall be followed for admission of students to the above courses for the year 2003-2004 :-

Sl. No.	Name of the Course	Minimum Eligibility Marks
(1)	(2)	(3)
1.	M.B.B.S.	O.C. (i) Minimum of 60% marks in Biology or Botany and Zoology taken together, 60% marks in each

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of Physics and Chemistry. Aggregate should not be less than 140 out of 200.
B.C.
Minimum of 60% marks as in item (i) above. Aggregate should not be less than 130 out of 200.
M.B.C.
Minimum of 55% in Biology taken together, 55% in each of Physics and Chemistry. Aggregate not less than 120 out of 200.
S.C.
Minimum of 40% marks in Biology, 40% each in Physics and Chemistry. Aggregate not less than 80 out of 200. "

4. The minimum eligibility marks as laid down under the Information Brochure relating to the Common Entrance Test for Admission to Tamil Nadu Private Medical Colleges are given hereunder :

"Minimum Eligibility Marks (for all applicants) -
a) A minimum of 60% marks in Biology or Botany and Zoology taken together.
b) A minimum of 60% marks in each of the subjects of Physics and Chemistry.
c) Aggregate of the percentage of the marks in (a) and the percentage of marks in (b) should not be less than 140 out of 200 marks."

5. The petitioner belongs to a Backward Community and she completed her Plus Two Examinations, where she secured 136%. On seeing the advertisement with regard to the Common Entrance Test to be conducted by the first respondent, which was formed by the second and third respondents for conduct of the Common Entrance Test, she obtained an application form. She paid a sum of Rs.1,000/- under the belief that she would be eligible to write the Common Entrance Test, being a candidate belonging to the Backward Class Community. But however, she found that while as per the Tamil Nadu Government Norms for B.Cs. the student should obtain 130 out of 200 marks in the aggregate, as per the eligibility criteria fixed by the first respondent, the student should obtain 140 out of 200 marks in the aggregate. The student questions the prescription of higher eligibility marks in the aggregate as irrational and contrary to the reservation policy of the Government, apart from being arbitrary. The petitioner submitted her application opting for admission in respondents 2 and 3, but she was not called for the Common Entrance Test in view of, what is alleged by her, the arbitrary fixation of minimum eligibility marks as 140 out of 200. In the mean time, the petitioner came to know that the second and third respondents had surrendered 65% of the seats for being filled up under the Government Quota from out of the students who participated in the Common Entrance Test conducted by the Government. Only 20% of the seats are available for being filled up from out of the students who have

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taken part in the Common Entrance Test conducted by the first respondent since the remaining 15% of the seats are reserved for N.R.I. Students. According to the petitioner, the power to fix and determine the standards for admission is with the Medical Council of India and it is fully occupied by Entry 66 of List I of the Constitution and though it has been recognized that the State could fix a higher eligibility criteria, it is not open to the respondents to flout the norms laid down by the Medical Council of India and the State Government and fix their own eligibility criteria.

6. When the matter came up for admission, notice was issued to the respondents and by consent, the main writ petition itself was taken up for final disposal.

7. Mr. K.M. Vijayan, learned senior counsel appearing for the writ petitioner submitted that the prescription of a high percentage of eligibility marks could not be done by the respondents. The eligibility criteria cannot be varied, thereby depriving the right of a person to participate in the entrance test. Learned senior counsel submitted that while it was open to the private institutions to devise their own Common Entrance Tests, which could be more innovative than what is conducted by the Government or different from it, they cannot shut the doors to any student from taking part in the Common Entrance Test, especially when Regulation 5 of the Medical Council of India Regulations only speaks of passing the qualifying examination. Therefore, it was not open to the private institutions to prescribe higher marks as the minimum marks in the qualifying examination even for appearing for the Common Entrance Test. Learned senior counsel further submitted that the eligibility criteria, viz., the minimum qualifying marks for writing the Common Entrance Test is different from the eligibility criteria that the institutions may set. This right of the student to participate in the Common Entrance Test has been deprived by the respondents' arbitrary action of fixing 140 out of 200 as the minimum marks to be obtained even for appearing for the Common Entrance Test. Learned senior counsel also submitted that when the minimum marks to be obtained in Biology or Botany and Zoology are taken together as 60% as per Clause 4(a) and the minimum in each of the subjects of Physics and Chemistry is 60% as per Clause 4(b), the aggregate of percentage should logically have been 120 and the raising of the minimum aggregate to 140 is per se irrational.

8. Mr. R. Krishnamoorthy, learned senior counsel appearing for the second respondent submitted that the applications for admission were issued on 21.6.2006, the Common Entrance Test was held on 14.7.2006, the writ petition itself was filed and admitted only on 11.8.2006 and therefore, the writ petition suffers from laches. It was also submitted that the Prospectus was placed before Justice S.S. Subramani Committee, which has approved of the criteria laid down in the Prospectus. It was also submitted that even as early as in May, the Government conducted Common Entrance Test had been held and therefore, the petitioner cannot be

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aggrieved by the Common Entrance Test conducted by the petitioner in July, when she had the opportunity to appear in the Government conducted Common Entrance Test.

9. Mr. R. Muthukumaraswamy, learned senior counsel appearing for the first respondent submitted that repeatedly, it has been held in the judgments of the Supreme Court that the autonomy of private unaided educational institutions cannot be interfered with. Learned senior counsel referred to several decisions where the Supreme Court had upheld the power of the Government, as the body which runs the institutions, to lay down higher qualifying marks, if it thought it was necessary. The right of the Government, as the body managing the institutions, to fix such eligibility criteria has been upheld.

10. Mr. Sathish Parasaran, learned counsel appearing for the third respondent submitted that a distinction should be drawn between the legislative power and the institutional right and after Inamdar's case, the right of the institution is absolute and cannot be interfered with. All that is required of these private unaided educational institutions is to ensure that they satisfy the triple tests laid down in order to ensure that the admission process if fair, transparent and non-exploitative.

11. The proceedings of the Permanent Committee for Common Entrance Test of Private Educational Institutions dated 10.6.2006 has been placed before this Court. The following paragraphs of the said proceedings are relevant :

> "From the information brochure issued by Tamilnadu Private Medical Colleges Association, we find that even the minimum eligibility marks for admission is different and on a higher percentage than prescribed by the State Government. When the two colleges prescribe (i.e., the Association) a different eligibility criteria, i.e., prescribing a higher standard than prescribed by the State of Tamilnadu for admission, there is no doubt in coming to the conclusion that the admission is based on merit which is only the basis for admission to any professional course."
>
> "When higher qualification is fixed for admission for MBBS and BDS Course, the number of candidates writing the examination will be much less than the common entrance test conducted for all the medical subjects together."
>
> "The two institutions i.e., Chettinad Hospital Research Institute and PSG College of Medical Science and Research, Coimbatore are only the two private institutions in Tamilnadu which imparts MBBS Course."

The Permanent Committee held that on the basis of the judgment in Inamdar's case, these two institutions can have a Common Entrance Test. These two institutions are respondents 2 and 3 herein.

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12. The validity of G.O. Ms. No.100 was considered by K.P. Sivasubramaniam, J. in Vinayaka Mission's Kirupananda Variyar Medical College vs. The Tamil Nadu Dr. M.G.R. Medical University [2005 (2) C.T.C. 772], where the private colleges were aggrieved by the University treating the admission of students contrary to the said G.O. It was held therein as follows :

> "Therefore, what was held as illegal was only diluting and lowering of the standards prescribed by the M.C.I. There was no bar for prescribing higher qualification for the purpose of shortlisting. It is further concluded that for shortlisting the candidates having the basic qualifications, it was permissible for the State authorities to have common entrance tests and to prescribe minimum qualifying marks for passing such tests."
>
> .....
>
> "For the same reason, the challenge to the validity of G.O. Ms. No.100, Health and Family Welfare Department, dated 14.5.2003, also deserves to be rejected."

While upholding the G.O., the learned Judge held that the revised criteria of higher qualifications having come into effect only from December 2003, it would not apply to the admissions relating to the Academic Year 2003-2004. So, the legality of G.O. Ms. No.100 has already been upheld.

13. Some of the relevant paragraphs in the various judgments of the Supreme Court which have dealt with this issue are now extracted :

In P.A. Inamdar vs. State of Maharashtra [(2005) 6 S.C.C. 537], it has been held as follows :

> "Pai Foundation has held that minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admission and the procedure therefor subject to its being fair, transparent and non-exploitative. The same principle applies to non-minority unaided institutions. There may be a single institution imparting a particular type of education which is not being imparted by any other institution and having its own admission procedure fulfilling the test of being fair, transparent and non-exploitative. All institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the abovesaid triple tests. The State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit-based admissions and preventing maladministration. The admission procedure so adopted by a private institution or group of institutions, if it fails to satisfy all or any of the triple tests, indicated hereinabove, can be taken over by the State substituting its own procedure."

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As regards appropriation of quota by State and enforcement of the reservation policy, the Supreme Court held that they do not see much of a difference between non-minority and minority unaided educational institutions and that the State cannot insist on private educational institutions which receive no aid from the State to implement the State's policy on reservation for granting admission on lesser percentage of marks, i.e. on any criterion except merit. It was also held that the observations in Pai Foundation's case are only to the effect that the unaided private educational institutions may voluntarily agree for seat sharing and there are also observations to the effect that they may frame their own policy to give freeships and scholarships to the needy and poor students or to adopt a policy in line with the reservation policy of the State to cater to the educational needs of the weaker and poorer sections of the society and they categorically held, "Nowhere in Pai Foundation's case, either in the majority or in the minority opinion, have we found any justification for imposing seat sharing, quota by the State or unaided private professional educational institutions and reservation policy of the State or State quota seats or Management seats".

14. The right of the private unaided institutions for total autonomy is repeatedly underlined in T.M.A. Pai Foundation vs. State of Karnataka [(2002) 8 S.C.C. 481]. Paragraph 40 of the judgment reads thus:

> "Any system of student selection would be unreasonable if it deprives the private unaided institution of the right of rational selection, which it devised for itself, subject to the minimum qualification that may be prescribed and to some system of computing the equivalence between different kinds of qualifications, like a common entrance test. Such a system of selection can involve both written and oral tests for selection, based on principle of fairness".

Even in the dissenting judgment of Quadri, J., insofar as the right of selection is concerned, after referring to Article 29(2), it is found as follows :

> "Thus, a citizen can be denied admission on the ground that all the seats in the institution are already filled, the antecedents of the citizen seeking admission in the institution are not good or his presence in the educational institution will not be conducive to proper administration of the institution, his merit as disclosed in the qualifying examination or in an examination conducted by such educational institution or merit as ascertained on the basis of interview conducted by such educational institution falls short of the minimum fixed by such an institution and the like".

Therefore, the above observations make it clear that it is possible for the institution to fix such minimum marks as it deems fit, and if the merit disclosed by the student falls short of it, the student can be denied admission.

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15. In N. Priyadarshini vs. The Secretary to Government, Education Department [2005 (3) C.T.C. 449], the First Bench of this Court held that the Government Order declaring that admissions to professional courses to be purely on basis of marks obtained in Plus Two Examinations alone must be quashed. Reference was made to the Medical Council of India Regulations which provide that in States having more than one University/Board/Examining Body conducting the qualifying examination, a competitive entrance examination should be held and therefore, the First Bench quashed the G.O. on the ground that there would be clear discrimination if the Common Entrance Test is abolished and the marks obtained by candidates in the qualifying examination alone are taken into account, since there are different examining boards, different syllabi, different question papers etc.

16. In Ravindra Kumar Rai vs. State of Maharashtra [(1998) 3 S.C.C. 183], the State of Maharashtra contended that it will not be possible to conduct a Common Entrance Test since the candidates from C.B.S.E. Board were small in number and therefore, it was not possible for the State to have a Common Entrance Test and that it would be an arduous task. This contention was rejected by the Supreme Court since it fell foul of the Medical Council of India Regulations.

17. In State of Tamil Nadu vs. S.V. Bratheep [(2004) 4 S.C.C. 513], the question whether the State Government could prescribe a higher minimum than what had been prescribed by the A.I.C.T.E. and whether it can be said to be in any manner adverse to the standards fixed by the A.I.C.T.E. or reduce the standards fixed by it, the Supreme Court answered, "In our opinion, it does not." The Supreme Court upheld the right of the State Government to prescribe marks higher than the minimum prescribed in the qualifying examination in order to be eligible to participate in the Common Entrance Test as a right in addition to the Common Entrance Test. They held that the streams proposed by A.I.C.T.E. are not belittled in any manner. Therefore, precisely the same issue was raised in the above case, and the Supreme Court upheld the right of the State Government to fix higher marks than the minimum in the qualifying examination. Therefore, the submissions made by the petitioner that prescription of such high marks which prevents the student even at the threshold from appearing for the Common Entrance Test has already been considered in the above case and rejected.

18. In State of Tamil Nadu vs. Adhiyaman Educational Research Institute [(1995) 4 S.C.C. 104], it was held as follows :

> "When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Centre or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law."

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19. The question that arises in the present case may perhaps not have been dealt with earlier, in the sense, the right of a private institution to impose a higher percentage of qualifying marks has not been challenged before. This is only because historically, until recently, there were only Government Medical Colleges and private institutions are a fairly recent phenomenon. But however, when the Supreme Court has upheld the right of the Government, as the body which runs the medical colleges, to prescribe a test of eligibility, equally, the private institutions, which run their own colleges, have the same right. In fact, their right perhaps is wider than the State's, which will have to follow the reservation policy while admitting students. As we have seen from the judgments in Pai Foundation's case and Inamdar's case, private unaided medical institutions cannot be forced to adopt the reservation policy and it is for them to devise an arrangement voluntarily to fulfill the social obligations that the Constitution demands, but it is made clear that is purely on their own volition.

20. In the above context, paragraph 23 of the judgment of the Supreme Court in Ambesh Kumar vs. Principal, L.L.R.M. Medical College, Meerut [(1986) Supp. S.C.C. 543], which is relevant, reads thus :

> "The government who runs these colleges has the right to prescribe a test of eligibility as has been held by this Court in the casereferred to above."

The case referred to therein is State of Andhra Pradesh vs. Lavu Narendranath [A.I.R. 1971 S.C. 2560]. There, the Supreme Court held that the order laying down a qualification for a candidate to be eligible for admission considered for admission to the medical courses on the basis of merit cannot be said to be in conflict with the Medical Council of India Regulations or in any way repugnant to the same. On the other hand, "By laying down a further qualification of eligibility, it promotes and furthers the standard in an institution".

21. In State of Andhra Pradesh vs. Lavu Narendranath [(1971) 1 S.C.C. 607], it was contended that the entrance test prescribed by the State was in contravention of the power under Entry 66, List I, and the task before the Supreme Court was, "to examine whether the Government had a right to prescribe a test for making a selection of a number of candidates from out of the large body of applicants for admission.....". Of course, the situation is slightly different here, but what we are concerned with is the right of the management of an institution, be it Government or a private body, to prescribe a test for selecting the candidates or to impose a minimum prescribed qualification which is higher than the minimum qualification imposed by the Medical Council of India. In the same judgment, there is reference to Chitra Ghosh vs. Union of India [(1969) 2 S.C.C. 228], where it was the Central Government which was running the college and it was held by the Supreme Court in that case that the

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decision as from what sources admission will be made and to lay down the criteria for eligibility is a question of policy and if the sources are properly classified, it is not for the Courts to interfere with the manner and method of making the classification. In fact, the Supreme Court observed in Lavu Narendranath's case that a candidate has not an unqualified right to a seat in a medical college merely because he has obtained higher marks than another candidate at the qualifying examination.

22. The petitioner, as pointed out above, does not have an unqualified right. Though the petitioner has filed a writ petition as though it is a challenge to the Prospectus, it is clear that the condition imposed by the first respondent is identical to what was imposed by the State in G.O. Ms. No.100 in respect of the general category. The Government, in tune with its reservation policy, decided to make special provisions for certain sections and has set down lower standards for students belonging to Backward Classes, Most Backward Classes, Scheduled Castes and Scheduled Tribes. This lowering of the criteria has not been done by the private colleges, viz., respondents 2 and 3 herein and indeed, they are not bound to do so. Therefore, though ostensibly the petitioner has challenged the right of respondents 2 and 3 to fix 140 out of 200 as the aggregate minimum eligibility marks, what the petitioner really wants is that the reservation policy should be adopted and that the minimum eligibility criteria should be in line with G.O. Ms. No.100. When G.O. Ms. No.100 itself has been upheld, the right of the respondents to fix the same minimum eligibility criteria, viz. obtaining of 140 out of 200 cannot be called in question. We have already seen from the extracts above that private unaided institutions are not bound to follow the reservation policy, nor can the State impose the same upon them. However, we have also seen that indirectly, these institutions have in fact discharged their social obligation by ceding to the State, 65% of their seats, which would be filled up in accordance with the State's policy of reservation, and it is only 20% of the seats that are with them, excluding the 15% seats mean for N.R.I. candidates that will be filled up by students who satisfy this eligibility criteria. The petitioner's challenge is without merit. The respondents have undoubtedly the right to impose a higher minimum marks to be obtained in the qualifying examination in order to be eligible to write the Common Entrance Test.

23. I am informed that the petitioner has actually secured admission in a medical college in Pondicherry. This is not denied by the petitioner. It was stated across the Bar that, that cannot prevent the petitioner from insisting that she should get admission in the State of Tamil Nadu. But we have also seen that no student has an unqualified right of admission. The question raised by the petitioner may very well be purely academic. When that is the position, we cannot halt the respondents' right to admit their own students if they have finalized the list.

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24. None of the grounds raised by the petitioner in this writ petition are tenable. The writ petition is, therefore, dismissed. No costs. Consequently, M.P. Nos.1 and 2 of 2006 are closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

The Secretary,
Permanent Committee for C.E.T. for Private
Professional Colleges in Tamil Nadu,
No.7-A (N.C.B.), P.S.K.R. Salai,
Greenways Road, Chennai-28.

1 cc To Mr.D.Balaraman, Advocate, SR.42151.
1 cc To Mr.M.T.Arunan, Advocate, SR.42114.

W.P. No.24596 of 2006

GM(CO)
RVL 14.09.2006

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